

Application No. 10/026,652

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**REMARKS/ARGUMENTS**

Petition is hereby made under the provisions of 37 CFR 1.136(a) for an extension of three months of the period for response to the Office Action. Our authorization to charge the prescribed fee to our deposit account is indicated in the Fee Transmittal Form.

The Examiner rejected claims 1, 22 to 24 and 29 under 35 USC 112, second paragraph. As a condition for the rejection, the invention is:

With respect to claim 1, the claim has been amended:

- to recite that the puff pastry shortening has been added to the blend of ingredients previously identified in the claim.
- to clarify that the remainder of the ingredients are the blend of ingredients previously identified in the claim.
- to clarify that the blending step forms a dough which is a heterogeneous mixture of the cubes of puff pastry shortening in the blend of ingredients previously identified. The reference to a remainder of ingredients has been removed.

With respect to claim 22, this claims has been amended to refer to "a" final temperature rather than "the" final temperature. This revision also should resolve the difficulty with the wording of claims 23 and 24.

With respect to claim 29:

- step (a) has been modified to specify that wheat flour, sugar and shortening are mixed to form a first blend of ingredients. Similarly, the subsequent steps (b), (c) and (d) have been amended to specify that they form respective second, third and fourth blends of ingredients.

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- step (e) has been amended to specify that the puff pastry shortening is added to the fourth blend of ingredients
- step (f) has been amended to specify that the cubes of puff pastry shortening and the fourth blend of ingredients are blended together to form a dough, thereby specifying the step which forms the dough,
- step (g) has been further amended to clarify that the heterogeneous mixture is of the cubes of shortening in the fourth blend of ingredients. The reference to a remainder of ingredients has been deleted.

Having regard to the changes made to the claims, it is submitted that claims 1, 2 to 24 and 29 can no longer be considered to be indefinite and hence the rejection thereof under 35 USC 112, second paragraph, should be withdrawn.

The Examiner rejected claims 1 to 43 under 35 USC 103(a) as being unpatentable over Wallin et al. (Canadian Patent No. 1,248,406). This reference is described on pages 1 and 2 of the application.

The present invention is directed to a dough and filling for toaster pastries as well as a method of manufacture of toaster pastries. Claims 1 to 29 are directed to the method of forming the dough. Claims 30 to 35 are directed to the dough itself. Claims 36 to 41 are directed to the filling. Claims 42 to 47 are directed to toaster pastry.

The present invention utilizes a unique combination of ingredients in order to provide the dough. The dough, as claimed in claim 30, comprises:

- Wheat flour in an amount of from about 25 to about 44% by weight of ingredients for the dough.
- Wheat farina in an amount of from about 13 to about 35% by weight of ingredients for the dough.

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- Shortening in an amount of from about 1.5 to about 2.5% by weight of ingredients for the dough.
- Water in an amount of from about 25 to about 35% by weight of ingredients for the dough.
- Puff pastry shortening, in the form of cubes, in an amount of from about 5 to about 15% by weight of ingredients for the dough.

Accordingly to claim 1, the dough is prepared by forming a blend of the ingredients other than the puff pastry shortening, adding the puff pastry shortening in the form of cubes to the blend of ingredients, and then blending the resulting mixture to form a heterogeneous mixture of the cubes of puff pastry shortening in the blend of ingredients. Preferably, the dough is formed into a layered structure in which a single base sheet of the dough is covered with pastry filling, with a single top sheet of the dough applied thereover.

The initial blend of ingredients is preferably formed by the procedure defined in claim 29. This procedure involves first mixing wheat flour, sugar to taste and shortening, then mixing in the wheat farina, followed by modified starch in an amount of from about 1 to about 1.5% by weight of ingredients for the dough, baking powder in an amount of from about 0.3 to about 1.2% by weight of ingredients for the dough, salt to taste, a reducing agent in an amount from about 0.015 to about 0.025% by weight of ingredients for the dough, dextrose in an amount of about 0.25 to about 0.75% by weight of ingredients for the dough, and dried egg yolk in an amount of about 0.8 to about 1.3% by weight of ingredients for the dough. Finally, there is mixed in yeast in an amount of about 0.3 to about 1.5 wt% of ingredients for the dough and water in an amount of from about 25 to about 35% by weight of ingredients for the dough. The resulting blend of ingredients then is processed as described in claim 1.

The filling of the toaster pastry, as defined in claim 36 comprises fruit in an amount of from about 1 to about 50 wt% of the ingredients of the filling, water in

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an amount of from about 20 to about 50 wt% of the ingredients of the filling, a sweetener in an amount of about 20 to about 40 wt% of the ingredients of the filling, corn syrup in an amount of about 6 to about 20 wt% of ingredients of the filling, modified starch in an amount of from about 4 to about 7 wt% of ingredients of the filling, a gum in an amount of about 0.3 to about 0.7% by weight of ingredients of the filling, and an acid in an amount of from about 0.3 to about 0.7% by weight of ingredients of the filling.

The development of a commercially-acceptable toaster pastry provides a number of technical problems in the preparation, storage and stability of such products. Such problems are discussed in more detail in Wallin et al and hence will not be repeated here. An acceptable product is expected to have high flavour combined with storage stability. The manufacturers of toaster pastry products have been faced with a dilemma. Those things that make the product most desirable for the consumer, namely flaky, crisp and tender exterior crust, tender and moist interior, high percentage of filling with the pastry crust, as well as high moisture level in the filling, also make the product most undesirable from the standpoint of storage and stability.

Wallin et al and the applicants attempt to address this dilemma. Both are able to produce a satisfactory commercially-accepted product, but the approaches are different, as explained below. As the Examiner indicates, Wallin et

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an amount of from about 20 to about 50 wt% of the ingredients of the filling, a sweetener in an amount of about 20 to about 40 wt% of the ingredients of the filling, corn syrup in an amount of about 6 to about 20 wt% of ingredients of the filling, modified starch in an amount of from about 4 to about 7 wt% of ingredients of the filling, a gum in an amount of about 0.3 to about 0.7% by weight of ingredients of the filling, and an acid in an amount of from about 0.3 to about 0.7% by weight of ingredients of the filling.

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Wallin et al and the applicants attempt to address this dilemma. Both are able to produce a satisfactory commercially-accepted product, but the approaches are different, as explained below. As the Examiner indicates, Wallin et al discloses a method of forming a dough for a breakfast pastry and a filling for the pastry.

The dough in Wallin et al comprises from about 45 to 60% moderately strong flour, about 30 to 45% added water, about 4 to 20% roll-in shortening, 0 to 10% sugar, 0.5 to 1.5% salt, dough conditioner, flavour and 0 to 0.5% emulsifier. Yeast in about 0.4 to 4% and added shortening of 0.5 to 10% also are added.

The dough composition is prepared by making a dry mix of flour, sugar, salt, dough conditioner, chemical leavening agents, eggs, shortening and

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flavouring to which are added water and yeast. The ingredients are then fully mixed and maintained at a controlled temperature, in order to prevent premature proofing. The applicants procedure does not involve a proofing step. By using the recited ingredients and effecting the specified order for mixing, the necessity for a proofing step is avoided.

The dough then is laminated with a roll-in shortening into a laminated dough pad in which each layer is substantially discrete and continuous. It is stated in Wallin et al (page 22, lines 14 to 19), when the roll-in shortening is used at the levels described in the reference, the desired effects of the invention are achieved, provided that the layers of roll-in shortening in the laminated dough pad are substantially discrete and continuous. There is no arrangement other than the laminated dough pad described in Wallin et al which is said to achieve the desired result.

The Examiner is correct that Wallin does not disclose a roll-in shortening in the form of cubes. The Examiner indicates that it would have been obvious to use such materials of various sizes "as long as it can be effectively mixed with the dough". The Examiner considered such parameter (presumably size of cube) can be readily determined by one skilled in the art through routine temperature.

It is submitted that such is not the case. As already noted, Wallin et al describe only a laminated structure in which there are employed discrete sheets of dough and roll-in shortening. Since this structure is the only one described as producing a satisfactory product, there is no motivation provided by Wallin et al to utilize any other form of roll-in shortening.

In the present invention, cubes of puff pastry shortening are mixed with the blend of other ingredients to form a dough from which the toaster pastry is formed, the dough being a heterogeneous mixture of the cubes in the blend of

ingredients. There is no suggestion in the art to the use of such material in such a procedure to obtain a dough which is a heterogeneous mixture.

As the Examiner also recognized, the Wallin et al does not teach the use of wheat farina as an ingredient in a dough for a toaster pastry. The Examiner asserts that it would be obvious to one skilled in the art to use flour of different sizes when desiring to obtain different texture. However, wheat farina is generally not employed in the formation of dough and would not be selected as a component of the composition. Since wheat farina would not be selected as a component, it follows that wheat farina having selected amounts and characteristics also would not be selected.

The Examiner also notes that the Wallin et al references does not disclose the specific sequence of steps recited in claim 29. As noted previously, the sequence of steps is the preferred route determined by applicants with respect to formation of the blend of ingredients into which is blended the cubes of puff pastry shortening. This sequence has been found to lead to the most satisfactory products.

The Examiner indicates that it would have been obvious to one skilled in the art to determine the mixing parameters that give the most effective mixing in the most timely manner and that such parameters may be determined without undue experimentation.

The only procedure described in Wallin et al is that described on page 17 in which all the ingredient except for water and yeast are formed into a dry mix. After such dry mixing, the water and yeast are added and the ingredients then are fully mixed to provide a dough which then is formed into the laminated dough pad by laminating with the roll-in shortening. Rather than forming a dry mix to which water and yeast are added in a single step, applicants use a specific order of steps in order to obtain a smooth homogeneous blend prior to mixing with the water and yeast. This procedure facilitates obtaining a homogeneous mixture into which is blended the cubes of puff pastry shortening to form the dough.

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The Examiner further indicates tat the Wallin et al references does not describe the fruit filling defined in claim 36 nor the viscosity claimed for the filling. In this regard, the Examiner indicates that it would have been obvious to use any form of fruit depending on the flavor, taste and texture described and that it would have been obvious to use starch and gum at the high level end to increase the viscosity of the filing when a thicker filling is desired.

It is clear from the Wallin et al disclosure that the key parameters for the filling in Wallin et al are viscosity and pH. On page 9, lines 25 to 32, it is stated:

"providing that both viscosity and pH are controlled within the ranges hereinafter specified, it has been found that the filing formulation of this invention, in combination with the dough composition of this invention, will achieve a product of both high product quality and high moisture content, and yet one of good shelf stability and product stability."

Claim 36 has been amended to incorporate therein the subject matter of claims 40 and 41, namely a viscosity of at least about 62,000 cps and a pH of from about 2.8 to 3.2. Looking at Wallin et al, on page 10, lines 11 to 16, it is stated that the viscosity range is from about 20,000 cps to about 60,000 cps, preferably about 30,000 to about 50,000 cps, most preferably about 40,000 cps. Accordingly, it is clear that, while the broadly-recited viscosity range in Wallin et al is below the minimum level for applicants composition, the most preferred viscosity in Wallin is considerably below the viscosity employed by applicants.

While the pH range recited for applicants filling is within with the preferred range recited on page 11, lines 19 to 21 of Wallin et al, the viscosity is significantly different as noted above. Having regard to the quotation from page 9 of Wallin et al, with respect to the interaction of pH and viscosity and the interaction of the filling with the laminated dough, it must be presumed that the most preferred viscosity is at the most preferred pH level. Applicants combination of these parameters, as recited in amended claim 36, is quite different.

Having regard to the above comments with respect to the subject matter defined by applicants claims and the disclosures of Wallin et al and the



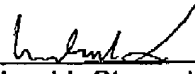
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distinctions thereover, it is submitted that claims 1 to 43 are patentable over the applied art and hence the rejection thereof under 35 USC 103(a) as being unpatentable over Wallin et al, should be withdrawn.

It is believed that this application is now in condition for allowance and early and favourable consideration and allowance are respectfully solicited.

Respectfully submitted,

  
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